



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

NOV 13 2013

REPLY TO THE ATTENTION OF:

SR-6J

**GENERAL NOTICE LETTER  
URGENT LEGAL MATTER -- PROMPT REPLY NECESSARY  
CERTIFIED MAIL: RETURN RECEIPT REQUESTED**

Rich Whitling, Chief Executive Officer  
Flexible Foam Products, Inc.  
200 East North Street  
Spencerville, OH 45887

Re: Lusher Street Groundwater Contamination Site  
Elkhart, Indiana (the "Site")  
General Notice of Potential Liability

Dear Sir:

This letter notifies you of potential liability, as defined by Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9607(a), as amended (CERCLA), that you may incur or may have incurred with respect to the above-referenced Site. This letter also notifies you of potential response activities at the Site, which you may be asked to perform or finance at a later date.

**NOTICE OF POTENTIAL LIABILITY**

The U.S. Environmental Protection Agency (EPA) has documented the release or threat of release of hazardous substances, pollutants, or contaminants into the environment at the above-referenced Site. EPA has spent, and is planning to spend, public funds to investigate and control such releases or threatened releases at the Site. This action will be taken by EPA pursuant to CERCLA, 42 U.S.C. §§ 9601-9675 unless EPA determines that such action will be done properly by a responsible party or parties.

Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. Sections 9606(a) and 9607(a), and other laws, potentially liable parties may be ordered to perform response actions deemed necessary by EPA to protect the public health, welfare or the environment, and may be liable for all costs incurred by the government in responding to any release or threatened release at the Site.



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Such actions and costs may include, but are not limited to, expenditures for conducting a Remedial Investigation/Feasibility Study (RI/FS), conducting a Remedial Design/Remedial Action (RD/RA), and other investigation, planning, response, oversight, and enforcement activities. In addition, potentially liable parties may be required to pay for damages for injury to, destruction of or loss of natural resources, including the cost of assessing such damages.

EPA has evaluated information in connection with the investigation of the Site. Based on this information, EPA believes that you may be a potentially responsible party (PRP) with respect to this Site. PRPs under CERCLA include current and former owners and operators at the Site and persons who generated hazardous substances or were involved in the transport, treatment or disposal of hazardous substances at the Site.

By this letter, EPA notifies you of your potential liability with regard to this matter and encourages you to agree to reimburse EPA for costs incurred to date and to voluntarily perform or finance those response activities that EPA determines are necessary at the Site. In accordance with CERCLA and other authorities, EPA has already undertaken certain actions and incurred certain costs in response to conditions at the Site. These response actions include hooking homes up to municipal water supplies or providing whole-house well filters to prevent exposure to contaminated groundwater, and performing an RI/FS. EPA expects to expend additional funds for response activities at the Site under the authority of CERCLA and other laws.

#### **SPECIAL NOTICE AND NEGOTIATION MORATORIUM**

You may receive an additional notice or notices from EPA in the future. Future notices may inform you that EPA is using the CERCLA Section 122(e) special notice procedures to formally negotiate terms of a consent order or consent decree to conduct or finance Site response activities, or it informs you that EPA is not using such procedures pursuant to Section 122(a). If EPA does not use Section 122(e) special notice procedures, the notice would specify why the special notice procedures were not appropriate in this case.

Under Section 122(e), EPA has the discretionary authority to use the special notice procedures if EPA determines that such procedures would facilitate an agreement between EPA and the PRPs and would expedite remedial action at the Site. Use of the special notice procedures triggers a moratorium on certain EPA activities at the Site. The purpose of the moratorium is to provide a period of time when PRPs and EPA may enter into formal negotiations for PRP conduct or financing of the response activities at the Site.

The initial moratorium for the RD/RA and for investigation or study work lasts for 60 days after the notice. If EPA determines that an offer to perform or finance the activities is submitted by the PRPs within those 60 days, and that the offer is a good faith offer, a 60 day extension is provided for by statute for further negotiations for an RD/RA settlement; and a 30 day extension is provided for an investigation/study settlement.

If EPA determines that a good faith offer has not been submitted within the first 60 days of the moratorium period, EPA may terminate the negotiation moratorium under Section 122(e)(4) of

CERCLA. EPA then may commence such cleanup or enforcement actions as it deems appropriate. In the absence of an agreement with the parties to perform or finance the necessary cleanup activities, EPA may undertake these activities and pursue civil litigation against the parties for reimbursement of Site expenditures. Alternatively, EPA may issue an administrative order pursuant to Section 106(a) of CERCLA to require PRPs to commence cleanup activities, or may commence civil litigation pursuant to Section 106(a) of CERCLA to obtain similar relief. Failure to comply with an administrative order issued under Section 106(a) of CERCLA may result in a fine of up to \$37,500 per day, under Section 106(b) of CERCLA, or imposition of treble damages, under section 107(c)(3).

## **SITE RESPONSE ACTIVITIES**

At present, EPA is planning to conduct the following activities at the Site:

1. An Interim Remedial Action to eliminate current risks and potential risks to homeowners in the Site area who may be exposed to contaminated groundwater and/or vapor intrusion. This Interim Remedial Action will be based on the RI and the Focused Feasibility Study that EPA has conducted, and will be selected after review of public comments on EPA's proposed Interim Remedial Action. EPA expects to issue its proposed Interim Remedial Action plan in December, 2013.
2. Remedial Design and Remedial Action (RD/RA) to design and implement the interim remedial action selected and approved by EPA for the Site beginning in 2014.
3. A Supplemental Remedial Investigation (RI) to identify the Site characteristics and to define the nature and extent of soil, air, surface water, and groundwater contamination at the Site and risks posed by the Site, focusing on potential source areas of groundwater contamination. EPA may decide to conduct two Supplemental RIs, one addressing ongoing sources of groundwater contamination, and one addressing long-term threats presented by contaminated groundwater at the Site.
4. A Feasibility Study (FS) to evaluate alternative remedial actions to remove, treat, or contain hazardous substances, pollutants, and contaminants at the Site. EPA may decide to conduct two FSs, one addressing ongoing sources of groundwater contamination, and one addressing long-term threats presented by contaminated groundwater at the Site.
5. Remedial Design and Remedial Action (RD/RA) to design and implement the final remedial actions selected and approved by EPA for the Site.
6. Follow-through activities to monitor, operate, and maintain the completed remedial action as required at the Site after the remedial action is complete.

## **INFORMATION TO ASSIST RESPONSIBLE PARTIES**

EPA would like to encourage good faith negotiations between the PRPs and EPA, as well as among the PRPs. To assist PRPs in preparing a proposal and in negotiating with EPA concerning this matter, EPA is providing the following information as enclosures to this letter:

1. A list of names and addresses of PRPs to whom this notification is being sent. This list represents EPA's preliminary findings on the identities of PRPs. Inclusion on, or exclusion from, the list does not constitute a final determination by EPA concerning the liability of any party for the release or threat of release of hazardous substances at the Site.
2. A fact sheet that describes the Site.

## **PRP STEERING COMMITTEE**

EPA recommends that all PRPs meet to select a steering committee responsible for representing the group's interests. Establishing a manageable group is critical for successful negotiations with EPA. Alternatively, EPA encourages each PRP to select one person from its company or organization who will represent its interests.

## **ADMINISTRATIVE RECORD**

Pursuant to CERCLA Section 113(k), EPA must establish an administrative record that contains documents that form the basis of EPA's decision on the selection of a response action for a Site. The administrative record files, which contain the documents related to the response action selected for this Site, will be available to the public for inspection and comment. The primary location is the EPA Region 5 Superfund Records Center, 7<sup>th</sup> Floor, 77 W. Jackson Blvd., Chicago, IL 60604-3590. The Records Center is open Monday - Friday, 8 am - 4 pm.

## **PRP RESPONSE AND EPA CONTACT**

You are encouraged to contact EPA by mail or e-mail to indicate your willingness to participate in future negotiations at this Site. You may respond individually or through a steering committee if such a committee has been formed.

If you have any questions pertaining to this letter, please contact or direct your attorney to contact Thomas Krueger, Associate Regional Counsel, (312) 886-0562, [Krueger.Thomas@epa.gov](mailto:Krueger.Thomas@epa.gov), or Sheila McAnaney, Assistant Regional Counsel, at (312) 353-3114, [McAnaney.Sheila@epa.gov](mailto:McAnaney.Sheila@epa.gov).

Sincerely,



*for* Joan Tanaka  
Chief, Remedial Response Branch #1  
Superfund Division

Enclosures

bcc: Grace Co, EPA  
Thomas Krueger, EPA  
Sheila McAnaney, EPA  
Syed Quadri, EPA